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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,342	12/12/2001	Garry D. Friesen	P05453US0	8992

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DES MOINES, IA 50309-2721

EXAMINER

KEENAN, JAMES W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/020,342

Applicant(s)

FRIESEN, GARRY D.

Examiner

James Keenan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 20-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-25 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other:

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19, drawn to a trailer with guide plates and lock bars, classified in class 410, subclass 80.
- II. Claims 20-23, drawn to a trailer having a hopper with a gate, classified in class 414, subclass 519.
- III. Claims 24-25, drawn to a trailer with a foldable auger conveyor, classified in class 198, subclass 313.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I, II, and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as guiding and securing a flanged container on the trailer, invention II has separate utility such as selectively emptying a container on a trailer through a gated hopper, and invention III has separate utility such as emptying the contents of a container on a trailer with a foldable auger conveyor. See MPEP § 806.05(d).

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. During a telephone conversation with Kirk Hartung on 8/19/03 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-19. Affirmation of this election must be made by applicant in replying to this Office action. Claims 20-25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 14-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Although not identical, claims 14 and 16 are not patentably distinct.

In claims 15 and 17, there is no antecedent basis in claim 10 for "the guide plates".

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Roth (US 6,092,974, cited by applicant).

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Roth shows a trailer for bulk seed containers including wheeled bed 12, hopper 64, conveyor 60, and guide plates 52 which extend "upwardly and outwardly", as broadly claimed. Although the containers are not disclosed as having a flange, it is noted that the container structure is not a positively claimed limitation. Since the trailer could be used, without modification, for flanged containers, it is considered to meet all claim limitations.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kruse (US 5,465,829, cited by applicant).

Kruse shows a transporter for bulk seed boxes including bed 30, hopper 44, conveyor 48, and guide plates 64. Although the transporter is towed behind a tractor, it is not a wheeled trailer. Nevertheless, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Kruse by adding wheels thereto so as to create a trailer vehicle, as this would offer greater flexibility and support.

Re claim 8, the box rather than the hopper includes a gate. However, Kruse acknowledges that other types of gates may be used. Therefore, it would have been

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obvious to have utilized a gate on the hopper, as this would simply be an alternate equivalent design expediency. The further inclusion of a control arm connected to the gate is considered a further expediency.

11. Claims 10, 13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehlers (US 6,425,725).

Ehlers shows a vehicle for bulk seed boxes including bed 20, an elongated enclosure for receiving seed, i.e., a hopper (see col. 2, lines 23-28), conveyor 45, and lock bars 25, 25', and 40 which overlap and engage a flange on the boxes to secure them to the bed. The bed is permanently attached to a truck rather than being a separate trailer. It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Ehlers by disposing the seed handling equipment on a wheeled trailer to be towed behind the truck, as this would enable the truck to be used for other work when not being used for seed handling.

Re claim 13, it would have been a mere design expediency for the lock bars to extend along opposite sides of the boxes; note in particular the rear lock bar 40.

Re claim 18, the use of a gate on the hopper and corresponding control arm is considered an obvious design expediency.

12. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth in view of Ehlers.

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Roth does not show lock bars for engaging flanges on the boxes. It would have been obvious for one of ordinary skill in the art at the time of the invention to have added lock bars to engage flanges on the boxes, as shown by Ehlers, as this would provide a more secure engagement of the boxes for travel over rough terrain.

13. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehlers in view of Titcombe (US 3,868,083).

Ehlers does not show the lock bars to be pivotally mounted, although the rear bar 40 is movably mounted. Titcombe shows pivotally mounted bars for lockingly engaging a flange of a container on a trailer as it is being pulled across a field. It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Ehlers by pivotally mounting the lock bars for movement between locking and unlocking positions, as shown by Titcombe, as this would accord a more convenient means of securing the boxes on the vehicle.

14. Claims 4-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth in view of Ehlers, as applied to claim 3 above, and further in view of Titcombe.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Roth by utilizing the pivoting lock bars of Titcombe for the same reason given in paragraph 13 above.

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15. Claims 14 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehlers in view of Roth.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Ehlers by adding guide plates to align the boxes on the bed, as shown by Roth, as this would improve and simplify the loading of boxes.

16. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ehlers in view of Roth, as applied to claim 14 above, and further in view of Titcombe.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Ehlers by pivotally mounting the lock bars on the guide plates, as suggested by Titcombe, as this would provide a more convenient securement of the boxes on the vehicle.

17. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roth in view of Grieshop (US 5,013,208) and Carlson et al (US 5,695,399).

Roth does not show the auger to comprise first and second sections pivotally connected together with a gas cylinder to facilitate movement of the second section between transport and discharge positions. Grieshop shows a similar unloading auger which comprises first and second sections pivotally connected together and a fluid cylinder (presumably hydraulic) to move the second section between transport and use positions. Carlson et al show a folding auger movable between transport and use



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positions with the assistance of a gas spring. It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Roth by constructing the auger with first and second sections pivotally connected together, as shown by Grieshop, as this would provide more a compact vehicle when not in use, and to have utilized a gas spring rather than a fluid cylinder to move the second section between the use and storage positions, as suggested by Carlson et al, as this would be much less costly and complex than a hydraulic system.

18. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ehlers in view of Grieshop and Carlson et al.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Ehlers with a folding auger and gas spring arrangement, as suggested by the combined teachings of Grieshop and Carlson et al, for the same reasons given above in paragraph 17.

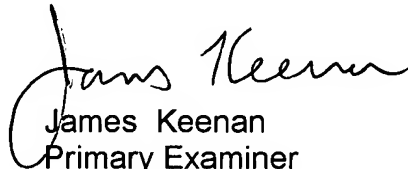
19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 703-308-2559.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
James Keenan  
Primary Examiner  
Art Unit 3652

jwk  
8/20/03